

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

CALVIN McCROREY, JR.,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 08-3081-CV-S-RED
MARTY C. ANDERSON, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to exhaust available administrative remedies, it will be recommended that he be denied leave to proceed in forma pauperis.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse.

The files and records in this case establish that petitioner is lawfully in the custody of the Bureau of Prisons. He is serving a 240-month term of imprisonment, with a projected release date of April 12, 2017.

Petitioner alleges that his life is in danger at the Medical Center because he is a low security work cadre prisoner, and is currently housed at a high level administrative medical facility. He contends that his life is in danger, and requests that the Court order that he be transferred to a low

security facility in the southeast region.

Respondent contends that petitioner has failed to exhaust administrative remedies, given that he never obtained or completed an Informal Resolution Form prior to submitting his Administrative Remedy. It is also asserted that matters such as prisoner classification and eligibility for rehabilitative programs are delegated to the discretion of the Bureau of Prisons [“BOP”], and that the Due Process Clause does not afford him the right to be housed in a particular prison or to have a specific prison classification.

Regardless of petitioner’s assertions, it is clear that he has failed to fully and properly exhaust administrative remedies. The BOP requires that he first seek informal resolution of his claim by filing a BP-9 form with his case manager and then, if necessary, appeal the denial of relief. See United States v. Tindall, 455 F.3d 885 (8th Cir. 2006). Because petitioner has failed to fully exhaust the appropriate administrative remedies available to him, his claims are not properly before the Court pursuant to 28 U.S.C. § 2241. Accordingly, it must be recommended that the petition for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.

/s/ James C. England
JAMES C. ENGLAND, Chief
United States Magistrate
Judge

Date: 5/9/08